

**FILED**

**NOT FOR PUBLICATION**

OCT 04 2017

**UNITED STATES COURT OF APPEALS**

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

**FOR THE NINTH CIRCUIT**

**BRADLEY COOPER; TODD LABAK,  
Individually and On Behalf of All  
Others Similarly Situated,**

Plaintiffs-Appellants,

v.

**THORATEC CORPORATION;  
GERHARD F. BURBACH; TAYLOR  
C. HARRIS; DAVID V. SMITH,**

Defendants-Appellees.

No. 15-17369

D.C. No. 4:14-cv-00360-CW

**MEMORANDUM\***

Appeal from the United States District Court  
for the Northern District of California  
Claudia Wilken, District Judge, Presiding

Argued and Submitted September 14, 2017  
San Francisco, California

Before: **KOZINSKI** and **FRIEDLAND**, Circuit Judges, and **ARTERTON**,\*\*  
District Judge.

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

\*\* The Honorable Janet Bond Arterton, United States District Judge for the District of Connecticut, sitting by designation.

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“[A] statement is misleading if it would give a reasonable investor the impression of a state of affairs that differs in a material way from the one that actually exists.” In re Cutera Sec. Litig., 610 F.3d 1103, 1109 (9th Cir. 2010) (citation and internal quotation marks omitted). During the class period, Thoratec received data on HeartMate II thrombosis events that strongly suggested thrombosis rates were significantly higher than initially advertised. The company’s affirmative statements during the class period downplayed this increase. Appellants have accordingly alleged, with sufficient specificity to survive appellees’ motion to dismiss, that Thoratec’s statements were misleading.

**REVERSED AND REMANDED.**